

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Sheo Lall
Bohra v. Sheikh Mahomed, from the High Court
of Judicature, North-Western Provinces, Agra,
delivered December 9th, 1869.*

Present:

LORD CHELMSFORD.

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

SIR LAWRENCE PEARL.

THIS being a case in which no one has appeared on the part of the Respondents, their Lordships have felt it to be their duty most anxiously to consider it, in order to see whether any sufficient grounds existed for the reversal of the judgment. They are unable to come to any other conclusion than that the judgment must be affirmed.

This was a suit for possession by establishment and declaration of right of 1662 acres in the Mehal of Thannah Bhowan, which was property confiscated by the Government in consequence of the participation by the former proprietors in the rebellion of 1857.

It was suggested to the Government that this property might be put up for sale; and Mr. Colvin, who recommended this, proposed, in order to prevent the possibility of any of the rebels, or of any of their relatives, becoming purchasers, that it should be put up in one entire lot. This suggestion was adopted by the Collector of Moczuffer Nugger, who, in a letter to the Commissioner of the Meerut Division, said, "Mr. Colvin's note so fully details how imperfect partition has been made, that nothing is left for me to explain. All

"the confiscated patches have been accurately de-
 "fined, and formed into one puttee. It has not
 "been thought necessary to make a regular but-
 "wara or perfect partition, although that could be
 "done if necessary; for all practical purposes the
 "separation of the scattered confiscated parcels is
 "complete, and the whole can now be put up for
 "sale with the prospect of some wealthy outsider
 "buying it in. Had the confiscated patches not
 "been divided off and then sold, the probability is
 "the relatives of the rebels would have purchased
 "the lots. Even now there is a fear of the rela-
 "tions buying in the property 'ism furzee.' This
 "will be guarded against as far as I am able."

These extracts from the correspondence are for
 the purpose of showing that the attention of the Go-
 vernment was at the earliest period called to the
 propriety or expediency of preventing rebels be-
 coming the purchasers of this property. But the
 Government did not adopt that view; and in a
 letter from the Secretary of the Sudder Board of
 Revenue to the Secretary of the Government, of the
 12th January, 1864, the Secretary of the Sudder
 Board says, "The Board, in recommending the
 "proposal for sale, remark that as the puttee is in-
 "termixed, and some of the rights (as in wells)
 "joint, and the responsibility common with the
 "other puttees, it will be inexpedient to place any
 "restriction on the competition of the resident
 "brotherhood, even though connected with the ex-
 "propriators. A stranger may find it difficult to
 "gain effective possession; and besides, the Go-
 "vernment need not lose the chance of a higher
 "price from unrestricted competition."

A sale to this effect was sanctioned by the Lieuten-
 ant Governor. The Under Secretary to the
 Government, writing to the Secretary of the Sudder
 Board on the 16th of February, 1864, says, "The
 "Lieutenant Governor has been pleased to sanction
 "the sale of the confiscated lands . . . as therein
 "detailed."

This was followed by an order of the Revenue
 Court, dated the 14th of March, 1864, which di-
 rects "that the auction be knocked down to who-
 "ever bids the highest, no attention being paid as to
 "whether he be a rebel or not;" and then a notice
 was issued, following upon that order, in these

terms:—“Whereas, in accordance with the sanction of the Commissioner, No. 74, dated 12th of March, 1864, conveying the sanction of the Government, the auction-sale of the property situated in the town of Thannah Bhowan in Pergunnah Thannah Bhowan, confiscated by Government for rebellion, and as detailed at foot, will be held on the 20th of April, 1864, it is hereby notified that whosoever may wish to purchase should present himself at Mozuffernuggeer and do so. Moreover, that the auction-purchaser will have to abide by the conditions of the auction, and that the auction-sale will be knocked down to whichever party gives the most. No attention will be paid as to whether the purchaser is a rebel. Whoever chooses may purchase.”

Of course that was notice to all the world that anybody, whatever he might be, whether rebel or not, going into that auction-room might become a bidder for, and the purchaser of, this confiscated property. Accordingly, an agent of the Respondent appeared in the auction-room and bid for him, and, after considerable competition, was ultimately decided to be the highest bidder, and the lot was knocked down to him upon his bidding of 19,000 rupees.

He then sought to have that sale perfected. He deposited the sum of 2060 rupees, and desired to complete the purchase, when he was met by an objection, that the sale, not having been ratified by the Collector, another person had come forward who had offered a larger sum, 22,000 rupees, and therefore that the sale to the Respondent would not be carried out.

The right to refuse to complete the sale is founded on a memorandum at the foot of the statement of the biddings, in these terms:—“This auction has been knocked down to Moulvie Sheikh Mahomed, the son of Moulvie Ahmed Oollah, resident of Thannah Bhowan, through Katim Uly, on the 20th April, 1864, on the condition of its being ratified by the Collector.”

The principal question in this case is, whether the ratification of the sale by the Collector was or could be made a condition of the sale. It is unfortunate in this case that we have no evidence at all of what the conditions of sale were, but, according

to the opinion of the Judge of the District Court, and also of the High Court, this, which is sought to be imposed as a condition, was no part of the original conditions of sale.

The Judge of the District Court said, "The notice declares that the property shall be sold to the highest bidder, subject to the conditions of sale. What those conditions were does not expressly appear, but no proof is adduced that the confirmation of the sale by higher authority was one of them." And the High Court was of opinion that, "inasmuch as the Collector, with the sanction of the superior authorities, made it a distinct condition of the sale that the property should be sold to the highest bidder, and that the consideration as to whether he was a rebel or not should not affect his right to purchase; the Government were not at liberty, subsequently to the sale, to disapprove of and annul the sale, on the grounds stated. That the Government, like any other seller, might impose whatever conditions it pleased in reference to property which it offered for sale, *prior* to the sale; but when it had expressly stated that it would not allow a particular objection to operate, it was not at liberty, *subsequently* to the sale, to impose a condition on the sale not only *novel*, but *directly* at *variance* with the terms under which it offered the property for sale."

Their Lordships apprehend that, looking at the terms of the memorandum, the words, "on the condition of its being ratified by the Collector," must be qualified in this manner,—that, supposing the conditions of the sale have not been complied with, then the Collector might refuse to ratify it, but to hold it to have been in the power of the Collector to refuse to ratify the sale because the purchaser was a rebel, would be a determination utterly repugnant to the terms and conditions upon which, according to the public notice, the sale was to be conducted.

Even assuming, therefore, that the Appellant is right with regard to the ratification of the Collector being a condition which attaches upon the sale, he was bound to show that the refusal to ratify the contract was by reason of the non-observance or the non-performance of some express condition of sale.

Under these circumstances the suit is brought, virtually for specific performance. In consequence of the contract in the auction-room, an equity arose against the Government, which the party seeks by this suit to enforce.

Now, inasmuch as Sheo Lall pretends or assumes to be the purchaser of this property, it was impossible that such a suit could be instituted without making him a party to it, and he might have shown that he was a purchaser for valuable consideration without notice, and if that had been the case, he would have been dismissed from the suit. But it appears clearly that he had notice of this purchase by the Respondent, because, in a petition which he presented to have his offer accepted, and the property conveyed to him, he said, "Whereas the auction-sale of the town of Thannah Bhowan, the property of rebels, and confiscated by Government, was yesterday sold for Rs. 19,000, and that, as yet, the sale has not been ratified, and that the property will admit of a higher price, I, prior to the ratification of the former auction, present this application to the extent of Rs. 22,200, and solicit that, if the authorities deem it advisable, the property be bestowed on me for that sum." He is, therefore, a purchaser with notice, and the same equity attaches against him as against the Government.

It has been said that this suit could not be instituted by the Respondent, inasmuch as what was done was an act of State, which could not be called in question. The meaning, as their Lordships understand it, of an act of State is something which appertains to the functions of Government. Suppose, for instance, any question had arisen with regard to the propriety of confiscating the rebels' property, that would have been an act of State. Probably the determination of the Government to sell that confiscated property might also be treated as an act of State, but in the sale the Government was exactly in the situation of an individual selling his property by auction; and when the property was knocked down, the relation of venter and vendee existed between the Government and the highest bidder.

It is impossible, therefore, to say that this suit was not properly brought against the Government.

It is to be regretted that the Government should have brought itself into the position of having sold to a person who, it appears, is likely to create some dissatisfaction, and provoke hostile feelings in the district.

The Government, no doubt, acted from the best motives, and according to the best judgment they could form as to the most advantageous mode of selling the confiscated property, and their Lordships can only hope that they will be able to protect the subjects in the district from the danger to which they seem to be exposed, from the character of the person whom they have permitted to become a purchaser.

Under these circumstances their Lordships can do nothing more than affirm the Decree, and dismiss the Appeal.